IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE ELEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.1759 of 1998

Between:

S.G.Anand,

S/o S.P.Gurumurty,

Aged about 48 years, LDC,

District Munsif's Court,

Jammalamadugu, Cuddapah district.

..... PETITIONER

AND

1. The District & Sessions Judge,

CUDDAPAH.

2. The Registrar (Admn.)

High Court of A.P.,

HYDERABAD.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a writ, order or direction more particularly one in the nature of a writ of certiorari calling for the records relating to the initiation of enquiry and all other subsequent proceedings of the Respondents and set aside the order dated 17-08-1996 of the 1st respondent as confirmed in appeal by the 2nd respondent on 5-3-97 and restore all the service benefits accrued to him during the period but for the reversion order.

Counsel for the Petitioner :Mr.M.V.K.VISWANADHAM

Counsel for the Respondents : SMT.M.BHASKARA LAKSHMI

S.C. for A.P.High Court

The Court made the following :

ORDER: (Per Hon'ble the Chief Justice)

Petitioner has questioned the legality and validity of the order dated 19-08-1996 passed by the District Judge, Cuddapah, holding him guilty of charges 1 to 4 and imposing punishment of his reversion to the immediate lower post. Petitioner questioned the said order in appeal on 31-10-1996, which was dismissed by the second respondent on 05-03-1997. These two orders are challenged by the petitioner.

We have heard learned counsel for the parties and perused the record. Petitioner was appointed as Record Assistant and was promoted as Junior Assistant in the year 1983. On

5th March, 1994 a regular departmental enquiry was ordered against him for dereliction of duties; five charges were framed, petitioner submitted his explanation and enquiry commenced thereafter. During enquiry, on 20-02-1995, some of the charges were deleted thereby charge-sheet was amended and five charges were framed which are as follows:

"Charge No.1: That you failed to keep the properties in order, by pasting slips to the case properties as per the directions of the then 1st Addl. Dist. Munsif, Proddatur from 1-7-1989 to 15-1-1990 and from 15-05-1990 to 31-5-1990 as per the directions of the District Judge, Cuddapah, in his order dated 7-3-1991 in Dis.No.1976 dated 8-3-1991.

Charge No.2: That you failed to handover charge of criminal case properties (i.e. non-valuables) to your successor before you went on medical leave i.e. 16-1-90 and before you were relieved on 31-5-1990 by the Principal District Munsif, Proddatur, on your transfer.

Charge No.3: That you failed to maintain the property registers properly and to mention the property disposal orders and also information as regards the availability of case property.

Charge No.4: That you caused disappearance of criminal case properties mentioned as items 1 to 6 in the proceedings of the District Court, Cuddapah, in Dis.No.1918 dated 9-3-1994
(already served on you).

Charge No.5: That you furnished false information to your superiors as regards handing over of certain case properties to
Sri S.Krishna Kumar which were found missing."

Enquiry Officer held the petitioner guilty of charges 1 to 4, but the petitioner was exonerated of Charge No.5. After accepting the report of the Enquiry Officer, explanation was called for and on consideration of the petitioner's explanation in reply, the District Judge proceeded to impose punishment, which was affirmed by the second respondent.

While working in the Court of I Additional District Munsif, Prodattur, in June, 1987 the petitioner was entrusted with the work of handling the non-valuable property. During this period, on 12-01-1990 the petitioner went on medical leave upto
31-05-1990. As a matter of fact, he had gone on casual leave and fell sick and

subsequently went on medical leave, which was granted to him. Later on, the petitioner was transferred from

I Additional District Munsif Court, Prodattur to the District Munsif Court, Jammalamadugu, where he joined the duty and on

12-03-1991 he handed-over the charge to S.Krishna Kumar. During enquiry, the person to whom petitioner handed-over the charge was examined as PW-8. Ex.A-24 is the list of properties handed over by the petitioner to PW-8 and it contains details of 383 properties of which charge was handed over by the delinquent, which also included the case properties of those cases for which charges were framed against the petitioner.

While discussing the evidence, Enquiry officer proceeded to make certain observations and raised doubt as to the handing over of all items pertaining to C.P.R.No.212 of 1987 and observed that in case complete charge was handed over by the petitioner to PW-8, PW-8 alone must be held responsible for the loss of property. In para-24 of the enquiry report, it is stated that PW-8 categorically says that all items of properties in C.P.R.No.212 of 1987 and C.P.R.No.136 of 1989 were handed-over by the petitioner to him on 26-03-1991 and 30-03-1991 respectively. Enquiry Officer also observed that PW-8 admitted that property items in these two cases which he received from the petitioner were not handed-over to PW-8 by his successor and proceeds to discuss details of the slips attached to the bundles containing property items and draws his own inference that it was for the petitioner to have explained about the loss of properties relating to C.P.Rs where properties are found to be less in number. As a matter of fact, the entire approach of the Enquiry Officer in a matter like this, where after the petitioner had been transferred, the raking up of the issue four years thereafter and on the basis of material on record that charge was framed, does show that complete charge was handed-over to PW-8, and as such, it was not at all appropriate to hold the petitioner guilty of Charge No.4.

Once having handed-over the charge and PW-8 having signed the list of case properties and even thereafter, PW-8 also handed over the charge to his successor, raking up of the issue after lapse of four years and then holding the petitioner guilty on the basis of inference drawn, is not just and proper. On this score, the disciplinary authority as well as respondent No.2 were not justified in upholding the finding of the Enquiry Officer and holding petitioner guilty of the said charge.

Insofar as charges 1 to 3 are concerned, after hearing learned counsel for the parties and perusing the record, we are of the view that there is no scope for interference with the findings recorded by the Enquiry Officer and for that, no interference would be called for in exercise of writ jurisdiction inasmuch as on the basis of evidence on record, view taken by the Enquiry Officer is the possible view.

Now the question is whether we should take upon ourselves to modify the punishment imposed or send back the case to the disciplinary authority to pass appropriate orders.

We would have adopted the second course of setting aside the order of punishment and thereby reserving liberty to respondents to pass appropriate orders. But, considering the fact that this writ petition was filed in the year 1998 and now petitioner is left with four years service, we are proposing to adopt the first course by proceeding to set aside the punishment imposed reverting the petitioner from the post of L.D.Clerk to that of Record Assistant and instead, impose punishment of stoppage of two increments without cumulative effect.

Accordingly, the writ petition is allowed and the punishment of reversion from the post of L.D.Clerk to Record Asistant imposed on the petitioner is set aside and is

modified to that of stoppage of two increments without cumulative effect.

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DEVINDER GUPTA, C.J.

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C.V.RAMULU, J

11-08-2004

bsc

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Eleventh Day of August, Two thousand and four.

Sd/-

Asst. Registrar.

To

1. The District & Sessions Judge,

CUDDAPAH.

2. The Registrar (Admn.)

High Court of A.P.,

HYDERABAD.

3. 2 CCs to the S.O. ‘C’ Section, High Court of A.P., Hyderabad.

4. 2 CCs to the Officer concerned, Legal Cell, High Court of A.P., Hyderabad.

5. 2 C.D. copies.